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Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Policy Implications of the Changing Video Marketplace	))	MM Docket No. 91-221

To: The Commission

JOINT COMMENTS

CEDAR RAPIDS TELEVISION COMPANY

JEFFERSON-PILOT COMMUNICATIONS COMPANY OF VIRGINIA

JEWELL TELEVISION CORP.

LANFORD TELECASTING CO., INC.

MARSH MEDIA, INC.

MARSH MEDIA OF EL PASO

WTZA-TV ASSOCIATES

By

Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Their Attorneys

November 21, 1991

SUMMARY

Growth in the video entertainment industry since 1975 has dramatically increased the number of viewing alternatives to broadcast television and has fundamentally and permanently altered the video marketplace. Broadcast television no longer is the sole source of video entertainment in the home, and broadcasters face stiff competition from cable television and other multichannel distribution systems. As a result of these changes, the FCC's current restrictive broadcast ownership policies are inappropriate in the video programming environment of the 1990's and, if left in place, inevitably will serve to frustrate the Commission's long-standing goals of promoting locally-produced and oriented programming and ensuring overall diversity of programming. Accordingly, the Commission should initiate rulemaking proceedings to eliminate or, at a minimum, relax the multiple ownership, duopoly, and cross-ownership limitations applicable to television broadcasters.

Elimination of the multiple and cross-ownership restrictions will permit TV broadcasters to apply their program acquisition and packaging expertise to different media and will permit them to capture economies of scale now available only to large cable MSO's. Removal of the restrictions will encourage cooperative news gathering arrangements, help maintain public affairs programming on

broadcast channels, and potentially increase the level and quality of local programming available on the multichannel media. It also will provide single and multiple channel programmers with the flexibility necessary to develop innovative and efficient uses of all of the media available to deliver video programming to the home.

The Commission should also begin to take steps now to promote the earliest possible introduction into all media, including broadcast television, of emerging technologies such as digital signal compression which increase channel capacity or permit enhanced video service. Multichannel competitors will not face regulatory obstacles to the introduction and exploitation of these technologies; neither should television broadcasters. In short, the FCC should provide over-the-air television broadcasters the same opportunity that other video programmers enjoy to adopt strategies that will best enable them to remain competitive in the new video marketplace and to continue to provide the high quality locally-oriented program service they have historically brought to the American public.

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JOINT COMMENTS

The parties identified below ("Joint Commenting Parties"), by their attorneys, hereby submit their comments in response to the Commission's Notice of Inquiry, FCC 91-215, released August 7, 1991, concerning the policy implications of a new video marketplace.

I. The Joint Commenting Parties

The parties submitting these comments are the licensees of television broadcast stations serving top-100 markets as well as smaller markets. They include both group and individual station owners, and licensees of network-affiliated VHF stations as well as an independent UHF station. Specifically, the parties submitting these comments and their media interests are listed below:

- Cedar Rapids Television Company, licensee of KCRG-TV, Channel 9, an ABC network affiliate, and KCRG(AM), both licensed to Cedar Rapids, Iowa.

Cedar Rapids Television Company is under common ownership with The Gazette Company, which publishes the Gazette, a daily newspaper serving the Cedar Rapids community.

- Jefferson-Pilot Communications Company of Virginia, licensee of WWBT(TV), Channel 12, Richmond, Virginia, an NBC network affiliate.
- Jewell Television Corp., licensee of KLST(TV), Channel 8, San Angelo, Texas, a CBS network affiliate.
- Lanford Telecasting Co., Inc., licensee of KALB-TV, Channel 5, Alexandria, Louisiana, an NBC network affiliate.
- Marsh Media, Inc., licensee of KVII-TV, Channel 7, Amarillo, Texas, an ABC network affiliate, and its satellite stations, KVIH-TV, Channel 12, Clovis, New Mexico, and KVIJ-TV, Channel 8, Sayre, Oklahoma.
- Marsh Media of El Paso, licensee of KVIA-TV, Channel 7, an ABC network affiliate, and its satellite station, KVIO-TV, Channel 6, Carlsbad, New Mexico.
- WTZA-TV Associates, licensee of WTZA(TV), Channel 62, Kingston, New York, an independent station.[1]

[1] WTZA-TV Associates is also filing separate, supplemental comments in this proceeding.

II. Introduction

The Commission initiated this inquiry to examine the implications of changes in the market for video programming for its regulation of television broadcasting. The most profound change in the past two decades has been the rise of multichannel programming outlets as competitive alternatives to conventional broadcast television. These outlets offer significantly more channels than existing broadcast television, and they have the ability to capture a second revenue source -- subscriber fees from viewers -- that generally is unavailable to broadcast stations.

The Joint Commenting Parties believe that the FCC's current restrictive broadcast ownership policies are inappropriate and, indeed, counter-productive in the video programming environment of the 1990's. Most of those policies were implemented at a time when few stations were available in most markets and dominance by the three television networks was perceived by the Commission to be a significant threat. In the current environment, however, arbitrary multiple and cross-ownership limitations seriously impede the ability of broadcasters to compete effectively with multichannel providers. Moreover, the existing ownership limitations, if left in place, inevitably will serve to frustrate the Commission's long-standing goals of promoting locally-produced and oriented programming and ensuring overall diversity of programming.

The Joint Commenting Parties accordingly urge the Commission to initiate rulemaking proceedings to eliminate or, at a minimum, relax the multiple ownership, duopoly, and cross-ownership limitations applicable to television broadcasters. In this time of intense and broad-based competition among video programming distributors, the government should not restrict one competitor while leaving others free to adopt more efficient organizational structures and capture economies of scale in the delivery of programming to consumers. Further, the Commission should begin to take steps now to promote the earliest possible introduction into all media, including broadcast television, of digital signal compression and other technologies which increase channel capacity or permit enhanced video service. In short, the FCC should provide over-the-air television broadcasters the same opportunity that other video programmers enjoy to adopt strategies that will best enable them to remain competitive in the new video marketplace and to continue to provide the high quality locally-oriented program service they have historically brought to the American public.

III. <u>Summary of OPP Findings</u>

The Commission's Office of Plans and Policy recognized in a recently released study that the marketplace for television programs has changed dramatically since 1975.[2] In 1975, over-the-air television was the only source of video programming for most households. Approximately 15% of television households subscribed to cable television, but cable was largely a medium for the retransmission of broadcast stations where over-the-air reception was poor. OPP Study, 6 FCC Rcd. at 4045. Home satellite reception of programming was unavailable.

The past decade and a half has been marked by a dramatic increase in the number of viewing alternatives to broadcast television in general and to the three networks in particular that has fundamentally and permanently altered the video marketplace. A fourth network has emerged, and the total number of over-the-air stations has increased substantially, from 706 in 1975 to 1,093 in 1990. Today, 53% of all households receive at least 10 over-the-air signals. Id. at 4013 (Table 4). Cable television is now available to over 90% of all television households and is subscribed to by 56% of them. Id. at 4044 (Table 15). Cable television networks have proliferated, with over 100 national and regional networks now offering programming that competes for viewers' attention. In addition, in those areas not passed by cable television, 20% of all households receive multichannel

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[2] Broadcast Television in a Multichannel Marketplace, Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd. 3996 (1991) (authored by Florence Setzer and Jonathan Levy) (hereinafter OPP Study).

programming through home satellite dishes. Id. at 4059. Finally, although they have had limited market penetration to date, direct broadcast satellite (DBS) and "wireless cable" systems offer additional multichannel packages for consumers in many areas.

The impact of these media on broadcast television has been enormous. The prime-time viewing shares of the three major television networks have fallen by one-third since 1975, while cable networks' shares have shown a rapid increase in the last five years. Id. at 4016, 4018. Broadcasters have seen their advertising revenues decline and their program acquisition costs increase as a result of increasing cable expenditures for popular programming. Id. at 4031.

OPP predicts that over the next decade these trends will continue. In particular, the competitive strength of multichannel providers will increase. Cable television's spot advertising revenues are likely to increase commensurate with an increase in viewing of cable channels. Id. at 4082. Cable, like other multichannel providers, also enjoys an advantage created by its ability to capture a second revenue source -- subscriber fees -- in addition to advertising revenues. Thus, cable will be able to generate more revenue than broadcasters from an equal number of viewers.

Further, digital signal compression techniques and other technological advances -- which OPP predicts will be the factor with the greatest impact in the next decade -- will significantly increase the number of channels available to video programming providers, thereby increasing their ability to offer additional programming or time diversity in existing programming. Id. at 4042. OPP predicts that compression technology will be available first on, and disproportionately benefit, satellite and cable systems. Based on these current and anticipated trends, OPP predicts that the broadcasting industry will be substantially smaller and less profitable by the end of the 1990s. Id. at 4097-98.

IV. The Commission Should Act Now to Remove Outdated Restrictions Upon Television Broadcasters and Enable Broadcasters to Compete More Effectively in a Multichannel Video Marketplace

As the OPP Study demonstrates, broadcast television no longer is the only alternative available to video consumers. Broadcasters face strong competition from multichannel providers in the acquisition of programming and the sale of advertising spots, and all indications are that the competition will only increase in the coming years. The decline in broadcasting service predicted by OPP is not inevitable, however. Broadcasters' ability to compete effectively with multichannel providers will be greatly enhanced if the Commission removes the ownership limitations and other outdated and unnecessary regulatory restrictions that prevent television station owners from adopting more efficient operating arrangements, and if the Commission takes steps to facilitate television broadcasters' maximum participation in the multichannel video marketplace.

The Commission should endeavor in its regulation of television to anticipate the needs and problems of broadcasters, not merely react to them after-the-fact. In particular, the Joint Commenting Parties urge the Commission to act swiftly to:

- Eliminate the limits on multiple ownership of broadcast stations (the "12 station" rules);
- Eliminate the television duopoly restrictions (or at a minimum relax them to permit common ownership of stations unless their Grade A contours overlap, and eliminate the restrictions entirely for unaffiliated UHF stations);
- Seek Congressional authority to eliminate the statutory broadcast/cable cross-ownership prohibition; and
- Eliminate the Commission's broadcast/cable and broadcast/newspaper cross-ownership prohibitions.

In addition, the Joint Commenting Parties strongly recommend that the Commission take the appropriate steps to promote the development and introduction of signal compression technologies and other video distribution advances in all media, including broadcast television, as soon as those technologies become available. Broadcast licensees should be given every opportunity to take advantage of compression technology and other advances to provide multiple channels of programming, with the content and time diversity that these technologies will allow.

A. The Commission's Rules Limiting National and Local Ownership of Television Stations and Competing Media Are Counterproductive in Today's Multichannel Video Marketplace and Should Be Eliminated or Substantially Relaxed

The OPP Study correctly observes that "[r]ules imposed to curb network or station market power or concentration of control over programming when television broadcasters were the video marketplace may be counterproductive in today's competitive market." OPP Study at 4102 (emphasis in original). Accordingly, OPP recommends that the Commission eliminate its broadcast multiple ownership rules and thus permit common ownership of larger numbers of broadcast stations nationwide. Id. at 4103. Similarly, the OPP Study recognizes that allowing common ownership of more than one station in a market, or combinations between broadcasters and other media, is likely to result in improvements in service in the local marketplace. Accordingly, OPP recommends that the Commission relax its television duopoly rule generally (to a "Grade A overlap" standard) and consider eliminating it entirely for unaffiliated UHF stations. In addition, OPP urges the Commission to ask Congress to repeal the statutory broadcast/cable cross-ownership prohibition and to eliminate its own cross-ownership restrictions. Id.

The Joint Commenters strongly endorse the OPP recommendations, and urge the Commission to rescind its television multiple and cross-ownership limitations.[3] Removal of these unnecessary ownership restrictions will enable broadcasters to compete more effectively and will stimulate the innovation and responsiveness to viewer preferences that are concomitant with unfettered competition. For example, with the restrictions removed, broadcasters in neighboring communities could more readily combine resources for news gathering in order to provide better coverage of local and regional events. Similarly, broadcasters would be free to form joint ventures with cable franchisees or newspapers in order to provide innovative local and public affairs programming.

On a national scale, elimination of the multiple ownership limitations would permit broadcasters to combine advertising sales operations, aggregate program acquisition budgets, and otherwise realize economies of scale in the acquisition, packaging, and delivery of television programming that are currently unavailable under the 12-station limit. Given the breadth of competition in video programming on a national scale, elimination of the multiple

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[3] The Joint Commenting Parties believe OPP's findings demonstrate that the television duopoly rule should be eliminated entirely. In a multichannel environment, there is no real danger to competition created by common ownership of two single-channel outlets. At a minimum, however, the Joint Commenting Parties urge the Commission to adopt OPP's recommendation to relax the rule substantially.

ownership limits poses no threat of national concentration of programming outlets.[4] Further, elimination will benefit program syndicators and advertisers as well as broadcasters by reducing the transaction costs involved in dealing separately with individual stations. The savings will inure to the benefit of viewers.

B. Elimination of the Television Multiple and Cross-Ownership Restrictions Will in Fact Foster Localism and Diversity

The Commission's television ownership limitations were promulgated when restrictions on the size of media entities were believed to be the only means to ensure the supply of local programming and foster diversity in television programming generally. Because broadcast television was the only feasible method of delivering video programming to consumers at that time, the Commission sought to prevent larger broadcasters from dominating the means of communication on a local or national level. In today's marketplace, however, that fear is simply unfounded.

OPP was correct when it concluded, "[t]he power of the networks that the Commission has historically sought to curb has succumbed to technology and competition." OPP Study, 6 FCC Rcd. at 4102. Numerous alternatives to over-the-air

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[4] Similarly, as the OPP correctly observed, "network dominance . . . will scarcely be an issue in the future multiple-provider environment." OPP Study, 6 FCC Rcd. at 4103.

broadcasting are now available, and their number and strength will certainly increase over the next decade. No single broadcaster could ignore the community's needs without an alternative provider stepping in to fill the void left by the broadcaster's neglect. In any event, the antitrust laws are certainly sufficient to guard against any combination large and widespread enough to achieve the dominance feared by the FCC. The Commission need not maintain additional restrictions on station ownership.

On the contrary, removal of the ownership restrictions, not maintenance of them, will best promote the FCC's goals of localism and diversity of programming in the current video marketplace. Local programming has long been the hallmark of over-the-air broadcast television. Indeed, as OPP found, it is the "primary domain" of broadcast television. Id. at 4087. Cable television systems typically devote a relatively small portion of their delivery capacity to local programming and, unlike broadcasters, are not under any federal regulatory obligation to provide such programming. Moreover, satellite-based systems, due to the nature of satellite transmissions, appear to be best equipped to provide programming for national, or at best regional, distribution. Thus, broadcast television is likely to continue to be the primary source of local programming.

The decline in broadcast television that OPP predicts may threaten broadcasters' ability to maintain local programming service. As costs of programming rise and station advertising revenues decline, many broadcasters may be forced to resort to cutting expenditures on local news and programming. Elimination or relaxation of the ownership restrictions, however, can help avoid that result.

First, removing the restrictions will permit and create incentives for more joint ventures among neighboring stations and other media for news gathering or local affairs programming. Through these arrangements, stations could share the costs associated with producing this programming, thereby enabling each station to produce the same quantity of programming it previously produced, but at a lower cost. Similarly, the added resources that a newspaper publisher could bring to news gathering may well enable a station to produce a local newsmagazine program that would otherwise be impossible. This, in turn, will help keep marginal stations financially viable and enable other stations to devote additional funds to producing more high quality local programming.

While some such joint undertakings are permissible under existing regulations, the existence of the Commission's cross-ownership restrictions unnecessarily limits the flexibility and scope of such arrangements and inevitably will deter consideration of many combinations that would be mutually beneficial and provide improved service to the public. In addition, the Joint Commenting Parties believe, allowing common ownership of interests in cable, broadcast television, and other local media will increase the economic incentives to the parties interested in utilizing more than one outlet to reach the community.

Moreover, removing the cross-ownership restrictions will inevitably increase the pool of potential investors in local stations. This will serve generally to increase station values and to create an influx of new capital to keep struggling stations viable and increase the level and quality of local programming offered by broadcasters.

A third effect of removing the television ownership restrictions is likely to be an increase in local programming provided by cable. As the much celebrated, but often delayed, launches of local all-news cable channels demonstrate, local programming is a highly cost-intensive venture. Many broadcasters have already made this investment, and would benefit greatly from the additional outlet that cable would provide. With the added programming time available on cable, a broadcaster could channel to cable some of the features that, due to current time constraints, are not broadcast on the local newscast. Further, when breaking stories of local interest develop, cable would be a perfect outlet for the extended coverage broadcasters would like to devote to the story. By allowing broadcasters to hold ownership interests in cable systems as well, the

Commission can facilitate and, indeed, help establish the economic incentives for such innovative undertakings.

In addition to local programming, the FCC has also sought generally to foster a diversity of viewpoints represented in programming. For years, the Commission has operated on the assumption that a larger number of station owners will result in more diverse programming. Whatever validity that assumption may have had in the past, it is certainly untenable in the existing multichannel video marketplace.

As cable television has demonstrated, the programmer's incentives change when multiple channels are available. With a single channel to program, the programmer's incentive is to reach the widest number of viewers by appealing to the common tastes of the largest possible number of individuals. A second single-channel programmer has the same incentive, and is likely to select programming that is largely duplicative of what is already available (i.e. the programmer will select what he or she believes is better programming aimed at the same mass audience). When those channels are available to the same programmer, however, the incentive is to select programming for the second channel that complements what is on the first channel, not programming that duplicates it. As the number of channels increases, so does the programmer's incentive to identify smaller and smaller groups with strong interests in certain types of programming. Elimination of the duopoly rules and introduction to broadcasting of video compression and other technologies that expand channel capacity/availability will inevitably increase broadcasters' incentives to provide diverse programming and thereby serve the public interest in the availability of such programming.

C. The Commission Should Ensure that Compression Technology and Other Advances that Increase Channel Capacity or Facilitate Enhanced Video Service Are Made Available to Television Broadcasters as Soon as Technically Feasible

Under current circumstances, the broadcaster has some incentive to target smaller groups in order to attract advertisers, but lacks the channel capacity to match the diversity that multichannel programmers can provide. Advertisers seeking to target their expenditures on advertising more effectively will demand more narrowly-focused programming, and broadcasters will be unable to satisfy that demand under current spectrum limitations. Video compression offers a solution to this limitation of terrestrial broadcasting. Indeed, the OPP Study found that even the compression methods currently under development would permit a 4 to 1 ratio on a single terrestrial broadcast channel. OPP Study at 4033 n.46.

Although this development certainly would help broadcasters respond to advertiser (and viewer) demands for more narrowly-focused programming, without prompt Commission action it may come too late to help broadcasters remain competitive. OPP predicts that compression technology could be introduced on satellite systems within the next year and on cable within just a few years. Id. at 4042. Broadcast development is not predicted until the end of the decade at the earliest, at which point multichannel outlets may have over 200 channels at their disposal. By then, broadcasters might not be in a financial position to take full advantage of the new technology. For compression technology to be of the most use to broadcasters, the Commission should act now to ensure that the technology may be introduced, and that television broadcasters are able to implement it to enhance their service to the public, as soon as the technology becomes available.

V. Conclusion

The OPP Study demonstrates that highly significant and irreversible changes have occurred in the marketplace for video entertainment in the past fifteen years. The FCC's regulation of broadcast television, which was predicated upon the perceived circumstances of the "old" video marketplace, should be re-evaluated in light of the current highly competitive atmosphere. The FCC should act now to remove obsolete regulations before projected trends in the industry exacerbate the disadvantage at which broadcast television already operates. By acting now to eliminate the television multiple ownership, duopoly, and cross-ownership restrictions, the Commission will enable broadcasters to make better use of their accumulated expertise in video programming to satisfy the demands of viewers in a multichannel environment. In addition, the Commission should be especially vigilant concerning the potential impact of compression technologies on the new video marketplace. It must act now, not after the technology has been implemented, to ensure that all participants will be able to enjoy the benefits of that technology.

Respectfully submitted,

CEDAR RAPIDS TELEVISION COMPANY

JEFFERSON-PILOT COMMUNICATIONS COMPANY OF VIRGINIA

JEWELL TELEVISION CORP.

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WTZA-TV ASSOCIATES

By: James R. Bayes

Richard E. Wiley
Carl R. Ramey
John C. Quale
James R. Bayes

of

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Their Attorneys

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